

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

OHIO CASUALTY INSURANCE COMPANY,)
)
Plaintiff,)
)
v.) Civil Action No. 3:06-cv-977-MEF
)
MANIFOLD CONSTRUCTION, LLC, et al.,)
)
Defendants.)

**RESPONSE TO PLAINTIFF'S MOTION FOR EXTENSION OF TIME TO FILE
DISCOVERY RESPONSES**

COME NOW the Defendants, Whittelsey Properties, Inc. and C.S. Whittelsey, IV (collectively referred to herein sometimes as "Whittelsey"), and in response to Plaintiff's motion for extension of time to file discovery responses requests this Honorable Court to deny said motion and direct Plaintiff to respond to Whittelsey's discovery requests immediately, and as grounds therefore, states as follows:

1. On the 31st day of October, 2006, Plaintiff, Ohio Casualty Insurance Company (hereinafter "Ohio Casualty"), filed its complaint for declaratory judgment to determine the rights and obligations of Ohio Casualty under a policy of insurance it issued to Manifold Construction, LLC and Jack Manifold, co-defendants in the present case.
2. On the 4th day of December, 2006, Whittelsey accepted service of Ohio Casualty's complaint.
3. On the 4th day of December, 2006, Whittelsey filed their motion to dismiss Plaintiff's complaint.
4. On the 12th day of July, 2007, this Honorable Court denied Whittelsey's motion to dismiss.

5. On the 25th day of July, 2007, Whittelsey filed their answer to Plaintiff's complaint. On the same day, Whittelsey served Plaintiff with requests for production.

6. On the 28th day of August, 2007, Plaintiff filed its motion for extension of time to respond to Whittelsey's discovery requests.

7. Pursuant to Fed.R.Civ.P. Rule 34(b), "[t]he party upon whom the request is served shall serve a written response within 30 days after the service of the request."

8. By rule, Plaintiff's discovery responses to Whittelsey's requests were due August 24, 2007. Plaintiff's motion has not been timely filed.

9. Pursuant to Fed.R.Civ.P. Rules 29 and 34(b), a party may seek an extension of discovery deadlines from the party to whom the requests are due.

10. Whittelsey has not been contacted by Plaintiff regarding the extension it now requests of this Honorable Court.

11. Whittelsey has not received any response to their discovery requests other than Plaintiff's motion.

12. Whittelsey's request is not overly broad or unduly burdensome. Plaintiff's case has been pending since October 31, 2007, the second day of the trial in the state case which led Plaintiff to file this case in the first place. Plaintiff has known the entire time that the items requested by Whittelsey would be required during discovery. Whittelsey believes that Plaintiff is simply stalling the production of the documents requested until after the parties have engaged in court ordered appellate mediation of the state case.

WHEREFORE, Whittelsey prays this Honorable Court will deny Plaintiff's motion and direct Plaintiff to respond to Whittelsey's discovery requests immediately.

Respectfully submitted this the 29th day of August, 2007.

WHITTELSEY, WHITTELSEY & POOLE, P.C.

/s/ Davis B. Whittelsey

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document on the parties listed below electronically or by placing a copy of the same in the United States mail, postage prepaid, to their correct address on this the 29th day of August, 2007.

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